

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Derrell Fulton, AKA Darryl Fulton,)	
)	Case No. 17 CV 8696
Plaintiff,)	
)	Hon. Judge Pacold
v.)	
)	Magistrate Judge Harjani
City of Chicago, et al.,)	
Defendants.)	

Nevest Coleman,)	
)	Case No. 18 CV 998
Plaintiff,)	
)	Hon. Judge Pacold
v.)	
)	Magistrate Judge Harjani
City of Chicago, et al.)	
)	
Defendants.)	

**THE OFFICER DEFENDANTS' MOTION FOR LEAVE
TO FILE SUPPLEMENTAL AUTHORITY IN SUPPORT OF
THEIR MOTION FOR SUMMARY JUDGMENT**

Defendants MICHAEL CLANCY, JOHN HALLORAN, KENNETH BOUDREAU, JAMES O'BRIEN, GERALD CARROLL, WILLIAM MOSER, ALBERT GRAF, MICHAEL CLANCY, THOMAS BENOIT, and GERILYNN YANOW, as Independent Administrator of the Estate of WILLIAM FOLEY (the "Officer Defendants"), through their undersigned attorneys and pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, move for leave to file supplemental authority in support of their Motion for Summary Judgment, and in support thereof, state the following.

1. The Officer Defendants filed their Motion for Partial Summary Judgment on May 24, 2021, Plaintiffs filed their Responses on August 4, 2021, and the Officer Defendants filed their Reply in support their motion on October 18, 2021. (Dkts. 316, 338, 356; Coleman's Response

was as Dkt 288 in Case No. 18 CV 998).¹ A hearing on the motion is scheduled for August 6, 2024. (Dkt. 389).

2. In their motion, the Officer Defendants argued that certain of Plaintiffs' fabrication claims fail as matter of law, because the allegedly fabricated evidence was not used at trial and therefore was not material. (Dkt. 316, p. 17-22; Dkt. 356, p. 30-39). The fabricated evidence at issue are statements made by Francine Calimee and Shaunice Williams that were not used at trial, and Plaintiff's own allegedly fabricated statements, which were not used in each other's trial. Plaintiffs believe fabricated evidence does not need to be used at trial to be material and is therefore actionable as a Fourteenth Amendment due process violation.

3. On November 23, 2022, the Seventh Circuit issued a decision in *Moran v. Calumet City*, 54 F.3rd 483, 499 (7th Cir. 2022), holding that a plaintiff has no due process fabrication claim if the fabricated evidence was not used at trial. A printout of the decision is attached as Exhibit A. The issue in *Moran* was whether an allegedly fabricated police report and a detective's fabricated pretrial testimony that a witness had identified the plaintiff at the crime scene was material if the evidence was not presented to the plaintiff's criminal jury. The Seventh Circuit held:

We agree with the district court that the allegedly fabricated evidence was not material. Recall that the relevant question is whether "there is a reasonable likelihood the evidence affected the judgment of the jury." *Patrick*, 974 F.3d at 835. Because the evidence we assume was fabricated—the police report and the detectives' pretrial testimony—was not introduced at the trial, it could not have influenced the jury's verdict.

4. The *Moran* decision is on point with an issue in this case and was issued more than one year after the filing of the Officer Defendants' Reply brief. 54 F.3rd 483, 499. Accordingly, and pursuant to Rule 15 of the Federal Rules of Civil Procedure, the Officer Defendants request leave to supplement their summary judgment pleadings with this authority set forth in *Moran*.

¹ Unless otherwise indicated, all docket entries are from *Fulton*.

WHEREFORE, for the reasons set forth above, Defendants MICHAEL CLANCY, JOHN HALLORAN, KENNETH BOUDREAU, JAMES O'BRIEN, GERALD CARROLL, WILLIAM MOSER, ALBERT GRAF, MICHAEL CLANCY, THOMAS BENOIT, and GERI LYNN YANOW, as Independent Administrator of the Estate of WILLIAM FOLEY, respectfully request that grant this motion and allow Defendants to supplement their summary judgment pleadings with the above-referenced additional authority, and for any further and additional relief the Court deems just and appropriate.

Respectfully submitted,

JOHN HALLORAN, KENNETH BOUDREAU,
JAMES O'BRIEN, GERALD CARROLL,
WILLIAM MOSER, ALBERT GRAF, MICHAEL
CLANCY, THOMAS BENOIT, THOMAS KELLY
and GERI LYNN YANOW, as independent
administrator of the Estate of WILLIAM FOLEY

s/ Patrick R. Moran

One of their attorneys

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